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CHAPTER Env-Wq 1400 SHORELAND PROTECTION

Statutory Authority: RSA 483-B:17

REVISION NOTE:

This chapter was formerly designated Env-Ws 1400. Document #8329, effective 4-23-05, readopted with amendments Env-Ws 1400. This chapter was subsequently redesignated editorially with a new subtitle as Env-Wq 1400 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05. The numerals of the rules remained unchanged, and the source notes for the rules under Document #8329 and prior filings refer to those numbers under the subtitle Env-Ws.

PART Env-Wq 1401 PURPOSE AND APPLICABILITY

Env-Wq 1401.01 Purpose. The purpose of these rules is to implement RSA 483-B, the comprehensive shoreland protection act.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1401.02 Applicability. These rules shall apply to all land areas subject to RSA 483-B as specified in RSA 483-B:4, XV and RSA 483-B:4, XVI, namely, all land areas:

(a) Within 250 feet, horizontal distance, of the natural mean high water level of natural fresh water bodies without artificial impoundments listed in the official list of public waters published by the department;

(b) Within 250 feet, horizontal distance, of the water line at full pond as determined by the elevation of the top of the impoundment structure of artificially impounded fresh water bodies listed in the official list of public waters;

(c) Within 250 feet, horizontal distance, of the highest observable tide line of coastal waters; and

(d) Within 250 feet, horizontal distance, of the ordinary high water mark of rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the current version of the U.S. Geological Survey topographic maps as defined in RSA 483-B:4, XVI (c), excluding those land areas exempted by RSA 483-B:20.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

PART Env-Wq 1402 DEFINITIONS

Env-Wq 1402.01 Statutory Definitions. Any term used in these rules that is defined in RSA 483-B:4 shall have the same meaning as in RSA 483-B:4.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05 ; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1402.02 Additional Definitions. In addition to the statutory definitions, the following definitions shall apply:

(a) “Fertilizer” means any substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

(b) “Non-conforming lot” means a parcel of property that does not meet current state or local subdivision, zoning, or other lot size or setback requirements.

(c) “Pre-existing nonconforming primary structure” means a primary structure that does not meet current setback requirements and that was built prior to:

(1) July 2, 2002 for properties on the Connecticut River, as provided by RSA 483-B:20;

(2) June 15, 1998 for properties on the Lamprey River, the Swift River, and those portions of the Merrimack River and the Contoocook River designated prior to that date for protection under RSA 483, as provided by Laws of 1998, 182:1; or

(3) July 1, 1994 for all other properties that are subject to RSA 483-B.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

#### PART Env-Wq 1403 ENFORCEMENT OF THE NATURAL WOODLAND BUFFER

##### Env-Wq 1403.01 Retention of Natural Woodland Buffer.

(a) Pursuant to RSA 483-B:9, V(a)(1) and subject to the prohibitions and limitations identified in RSA 483-B:9, V(a)(2), no person shall remove an existing natural woodland buffer from any property that is subject to RSA 483-B.

(b) If the department determines that a natural woodland buffer has been removed, the department shall proceed in accordance with RSA 483-B:5 to require the property owner to restore the natural woodland buffer.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

##### Env-Wq 1403.02 Restoration Plan.

(a) If ordered by the department to restore a natural woodland buffer, the property owner shall submit a restoration plan for approval.

(b) The restoration plan shall identify:

(1) The species of plants proposed for replanting;

(2) The number and distribution of plants proposed for replanting;

(3) The basal area of the trees proposed for replanting;

(4) The existing trees remaining within the natural woodland buffer, if any; and

(5) The existing and proposed structures, including but not limited to the primary structure, accessory structures, and water-dependent structures.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1403.03 Plan Approval. The department shall approve a restoration plan that meets the following criteria:

(a) Replacement plantings shall meet one of the following:

(1) Subject to (c), below, replacement plants shall consist of the species that are as close as possible to the species present prior to vegetation removal; or

(2) At least 75 percent of the replacement plants shall be chosen from the natural woodland buffer plantings list included as appendix A to these rules.

(b) Subject to (c), below, replacement plants shall have spatial and compositional diversity that replicates the previously existing natural woodland buffer.

(c) No species listed on the New Hampshire prohibited invasive species list developed pursuant to RSA 430:53, III or the New Hampshire restricted invasive species list developed pursuant to RSA 430:53, IV shall be planted, even if such species existed on the property prior to the property being cleared.

(d) Replacement and remaining trees shall comprise at least 50 percent of the basal area that existed prior to cutting.

(e) Replacement trees shall be placed no further apart than 10 feet on center.

(f) There shall be no changes to surface drainage unless a sediment and erosion control plan is submitted and approved. The sediment and erosion control plan shall be submitted with the restoration plan and shall meet the requirements specified in Env-Ws 415 or successor rules in subtitle Env-Wq.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1403.04 Opening for Construction.

(a) Subject to (b) below, the opening for construction for primary structures shall be measured on the horizontal plane as the area extending 25 feet from the exterior edge of the footprint of the structure.

(b) Between the primary building line and the reference line, the opening for construction for primary structures shall be measured on the horizontal plane as the area extending 15 feet from the exterior edge of the footprint of the structure.

(c) The opening for construction for an accessory structure or water-dependent structure shall be measured on the horizontal plane as the area extending 10 feet from the exterior edge of the footprint of the structure.

(d) The property owner shall stake the footprint(s) of the structure(s) in the field prior to removal of vegetation.

- (e) The opening for construction shall be delineated on all plans submitted to the department.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1403.05 Trees Outside Construction Opening.

(a) Any tree located outside the opening for construction shall be counted in the basal area percentage limitation calculations, subject to RSA 483-B:9, V(a)(2)(D).

(b) For purposes of determining compliance with RSA 483-B:9, V(a)(2)(A), only those areas outside the opening for construction shall be considered.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

PART Env-Wq 1404 EROSION AND SEDIMENTATION

Env-Wq 1404.01 Permitting and Water Quality Requirements.

(a) Pursuant to RSA 483-B:9,V(c), construction, earth moving, or other significant alteration of the characteristics of the terrain within the protected shoreland shall comply with RSA 485-A:17 and Env-Ws 415 or successor rules in subtitle Env-Wq.

(b) No person shall allow construction or other activity to degrade water quality in violation of the water quality standards specified in Env-Ws 1700 or successor rules in subtitle Env-Wq.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

PART Env-Wq 1405 ACCESSORY STRUCTURES AND WATER-DEPENDENT STRUCTURES

Env-Wq 1405.01 Applicability. The requirements of this part shall apply to structures located between the reference line and the primary building line.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1405.02 Construction of Accessory Structures. Accessory structures shall be constructed:

- (a) Only if allowed by local zoning; and  
(b) In accordance with the local building code.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1405.03 Limitations on Accessory Structures. Accessory structures shall:

- (a) Not exceed 20 feet in height;  
(b) Have a footprint no larger than 150 square feet; and

(c) In the aggregate, cover no more than 25% of the property that lies between a line parallel to and 20 feet from the reference line and a line parallel to and 50 feet from the reference line.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05 ; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1405.04 Setback for Accessory Structures. All accessory structures built after November 26, 1996 shall be set back at least 20 feet from the reference line.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1405.05 Slope Limitation for Accessory Structures. No accessory structure shall be built on land having greater than 25% slope.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1405.06 Construction of Water-Dependent Structures. Water-dependent structures shall be constructed:

- (a) Only if allowed by local zoning;
- (b) Only if permitted under RSA 482-A; and
- (c) In accordance with the local building code.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1405.07 Size of Water-Dependent Structures. If a water-dependent structure is allowed under Env-Wq 1405.06, it shall:

- (a) Not exceed 20 feet in height; and
- (b) Have a footprint no larger than 900 square feet.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1405.08 Slope Limitation for Water-Dependent Structures. No water-dependent structure shall be built on land having greater than 25% slope.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

#### PART Env-Wq 1406 REPLACEMENT OR REDEVELOPMENT

Env-Wq 1406.01 Replacement of Pre-existing Nonconforming Primary Structures Damaged By Accidental Means.

(a) The owner of any pre-existing nonconforming primary structure damaged by accidental means who wishes to rebuild the structure in its existing location shall begin construction within 2 years of the date of the accident.

(b) The 2-year period specified in (a), above, shall not run during the pendency of any legal action that is intended to or has the effect of precluding the owner from rebuilding the structure.

(c) If the owner does not begin construction to replace the pre-existing nonconforming structure within 2 years of the date of the accident, any primary structure thereafter constructed shall conform to all applicable set-back requirements.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.02 Replacement of Pre-existing Nonconforming Primary Structures Other Than Those Damaged By Accidental Means. Any pre-existing nonconforming primary structure shall be repaired, renovated, or replaced in kind only in accordance with RSA 483-B:11.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.03 Conversion of Decks and Porches Prohibited. No deck or porch located between the primary building line and the reference line shall be converted to become part of the primary living space.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.04 Redevelopment Waivers. Any property owner who wishes to redevelop, pursuant to RSA 483-B:11, II, a property on which a pre-existing nonconforming primary structure exists shall submit to the department:

(a) The information specified in Env-Wq 1406.05, on a waiver application form obtained from the department; and

(b) The documents specified in Env-Wq 1406.06.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.05 Information Required for Redevelopment Waiver. The applicant for a redevelopment waiver under RSA 483-B:11, II shall provide the following information:

(a) The name, mailing address, and daytime telephone number of property owner;

(b) The street address of the proposed project site, if different from the property owner's mailing address;

(c) A list of the names and mailing addresses, as well as tax map and lot numbers, of all abutters;

(d) The name of the water body;

(e) A description of all temporary and permanent impacts proposed within the protected shoreland;



- (f) A description of the project;
- (g) An explanation of how the project:
  - (1) Is more nearly conforming, as that phrase is defined in RSA 483-B:11, II, than the existing structure(s); and
  - (2) Will provide at least the same degree of protection to the public waters, as required by RSA 483-B:11, II.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.06 Attachments to Redevelopment Waiver Application. The applicant for a redevelopment waiver under RSA 483-B:11, II shall submit the following documents with the redevelopment waiver application form:

- (a) A copy of the US geological survey map with the property and project located;
- (b) A copy of the tax map showing the location and lot number of the proposed project;
- (c) A plan showing the existing conditions and proposed conditions after completion of the project, including the following:
  - (1) A plan of the property that shows all property boundaries, any easements over the property, and the footprints of all existing and proposed primary structures, accessory structures, and water-dependent structures, clearly labeled;
  - (2) The scale, if any, used on the plan;
  - (3) The dimensions and locations of all existing and proposed structures and all other relevant features necessary to clearly define the project;
  - (4) A labeled north-pointing arrow to indicate orientation;
  - (5) A legend that clearly indicates all symbols, line types, and shading used on the plan;
  - (6) For projects that include changing the footprint of structures on the property, a delineation of all wetlands;
  - (7) The reference line as defined in RSA 483-A:4, XVII;
  - (8) If the topography is to be altered, the existing and proposed topography, including a reference elevation;
  - (9) Proposed methods of erosion and siltation controls indicated graphically and labeled, or otherwise annotated as needed for clarity;
  - (10) The primary building setback, the natural woodland buffer, and the protected shoreland zone, as measured from the reference line;
  - (11) All other local and state setbacks;
  - (12) A tree plot plan showing all existing trees within the protected woodland buffer and an indication of trees to be cut for the project, including;

- a. The diameter of all trees at 4-½ feet from the ground;
  - b. The pre- and post-construction basal areas; and
  - c. Species type;
- (13) Photographs of the existing conditions including the area within 50 feet of all proposed impacts;
- (14) The profiles of all existing and proposed structures, clearly showing the ridgeline heights;
- (15) Dimensions, locations, and all other details relevant to the “more nearly conforming” proposal; and
- (16) The date of plan and the preparer’s name.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.07 Signature Required.

- (a) The owner and the authorized agent, if applicable, shall sign the waiver application.
- (b) The signature(s) shall constitute certification that:
  - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
  - (2) The signer understands that any waiver granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.08 Local Notification. Each applicant for a redevelopment waiver under RSA 483-B:11, II shall submit a copy of the signed waiver application to the local governing body of the city or town in which the property is located at the time of submittal to the department.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1406.09 Decision on Redevelopment Waiver Request.

- (a) The department shall approve a request for a redevelopment waiver under RSA 483-B:11, II upon finding that:
  - (1) The proposal is adequate to ensure that the intent of RSA 483-B is met; and
  - (2) The criteria for granting a waiver under RSA 483-B:11, II are met.
- (b) The department shall notify the applicant in writing of its decision. If the request is denied, the department shall identify the specific reason(s) for the denial.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

PART Env-Wq 1407 VARIANCE FROM THE MINIMUM STANDARDS

Env-Wq 1407.01 Variance Requests. Each applicant for a variance under RSA 483-B:9, V(g) shall:

- (a) Provide the information specified in Env-Wq 1407.02 on a form obtained from the department; and
- (b) Submit the documents specified in Env-Wq 1407.03 with the application.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1407.02 Information Required for Variance Requests. The applicant for a variance under RSA 483-B:9, V(g) shall provide the following information:

- (a) The name(s), mailing address(es), and daytime telephone number(s) of the property owner and the applicant, if other than the property owner;
- (b) The street address of the proposed project site, if different from the property owner's mailing address;
- (c) The name of the water body;
- (d) A description of the variance requested, with specific reference to the paragraph or subparagraph of RSA 483-B:9, V;
- (e) Pursuant to RSA 483-B:9, V(g), how the proposed variance meets the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b), as those criteria have been interpreted by the N.H. supreme court, as follows:
  - (1) The literal enforcement of the standard would result in an unnecessary hardship;
  - (2) Granting a variance will not result in the diminution in value of surrounding properties;
  - (3) The variance would not be contrary to the spirit of RSA 483-B;
  - (4) Granting a variance would not be contrary to the public interest; and
  - (5) Granting a variance would do substantial justice.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1407.03 Attachments to Variance Request. The applicant for a variance under RSA 483-B:9, V(g) shall submit the following documents with the variance request form:

- (a) A copy of the tax map showing the location and lot number of the proposed project; and
- (b) A plan showing the existing conditions and proposed conditions after completion of the project for which the variance is needed, including the following:
  - (1) A plan of the property that shows all property boundaries, any easements over the property, and the footprints of all existing and proposed primary structures, accessory structures, and water-dependent structures, clearly labeled;

- (2) The scale, if any, used on the plan;
- (3) The dimensions and locations of all existing and proposed structures and all other relevant features necessary to clearly define the project;
- (4) A labeled north-pointing arrow to indicate orientation; and
- (5) A legend that clearly indicates all symbols, line types, and shading used on the plan.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05 ; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1407.04 Signature Required.

- (a) The owner and the authorized agent, if applicable, shall sign the variance application.
- (b) The signature(s) shall constitute certification that:
  - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
  - (2) The signer understands that any variance granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1407.05 Local Notification. Each applicant for a variance under RSA 483-B:9, V(g) shall submit a copy of the signed variance application to the local governing body of the city or town in which the property is located at the time of submittal to the department.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1407.06 Decision on Variance Request.

- (a) The department shall approve a request for variance under RSA 483-B:9, V(g) upon finding that:
  - (1) The proposal is adequate to ensure that the intent of RSA 483-B is met; and
  - (2) The criteria for granting a variance under RSA 674:33, as identified in Env-Wq 1407.02(e), have been met.
- (b) The department shall notify the applicant in writing of its decision. If the request is denied, the department shall identify the specific reason(s) for the denial.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

PART Env-Wq 1408 URBANIZED SHORELAND EXEMPTION

Env-Wq 1408.01 Definition of “Historic”. For purposes of Env-Wq 1408.03(a) and Env-Wq 1408.05(b), “historic” mean no less than the 25-year period preceding the application, provided that the applicant may expand the time period at the applicant’s discretion.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1408.02 Eligibility for Urbanized Shoreland Exemption.

(a) Pursuant to RSA 483-B:12, I, the governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.

(b) Pursuant to RSA 483-B:12, IV, the Pease development authority, division of ports and harbors, may, in its discretion, request the commissioner to exempt all or a portion of any land purchased, leased, or otherwise acquired by it pursuant to RSA 12-G:39.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1408.03 Evidence.

(a) Pursuant to RSA 483-B:12, II, the applicant for an urbanized shoreland exemption shall present evidence of existing and historic patterns of building and development in the protected shoreland, which shall address the following:

- (1) Current and historic building density;
- (2) Current commercial or industrial uses;
- (3) Municipal or other public utilities; and
- (4) Current municipal land use regulations which affect the protected shoreland.

(b) The applicant for an urbanized shoreland exemption shall also provide:

- (1) The number of structures in sight from the water body;
- (2) Density allowed under current local zoning ordinances;
- (3) Extent of non-residential land use currently existing; and
- (4) If available, a recent aerial photograph of the area.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1408.04 Delivery. The applicant shall send the evidence directly to the office of energy and planning with a copy to the commissioner.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05

Env Ws 1408.05 Time Frames for Decisions.

(a) The department shall request the office of energy and planning to submit a written recommendation to the commissioner within 30 working days of receipt of a completed request.

(b) The commissioner shall approve the request if the evidence required by Env-Wq 1408 shows that the municipality has existing and historic patterns of building and development in the protected shoreland.

(c) The commissioner shall issue written findings in support of the decision within 30 working days from receipt of the recommendation.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

PART Env-Wq 1409 REVIEW OF SHORELAND ZONE PROJECTS

Env-Wq 1409.01 Definition. For purposes of this part, the following definition shall apply:

(a) “Project” means the full scope of development activities that are proposed to take place on a parcel of property within 5 years of the application date.

Source. #6383, eff 11-26-96; ss by #8219, INTERIM, eff 11-26-04, EXPIRES: 5-25-05; ss by #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1409.02 Coordination of Permit Applications.

(a) Any person applying for any of the permits specified in (c), below, shall identify on the application whether the property is located in a protected shoreland zone as specified in Env-Wq 1401.02.

(b) If the property is located in a protected shoreland zone, the applicant shall:

- (1) Identify all other state and local permits or other approvals that are required for the proposed project;
- (2) For permits or approvals required from the department, submit all applications concurrently;
- (3) For each permit or approval required from other than the department, identify whether the permit or approval has been applied for and, if so, whether a decision has been made on the application; and
- (4) Submit the information specified in Env-Wq 1409.03 with at least one of the applications submitted to the department. If the information is not submitted with each application, the applicant shall indicate which application contains the information.

(c) The permits to which this section applies shall be as follows:

- (1) Wetlands permit pursuant to RSA 482-A;
- (2) Individual sewage disposal system pursuant to RSA 485-A:29;
- (3) Subdivision permit pursuant to RSA 485-A:29;

- (4) Alteration of terrain permit pursuant to RSA 485-A:17; and
- (5) Any permit required for any activity listed in RSA 483-B:9, II through IV-d.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1409.03 Information Required with Applications. Subject to Env-Wq 1409.05, for each project within the protected shoreland zone, the applicant shall submit the following information, which may be in the form of plans, in sufficient detail to allow the department to determine whether the requirements of RSA 483-B:9 will be met:

- (a) The number, location, basal area, and distribution of trees existing within the natural woodland buffer on the property prior to the proposed project;
- (b) Whether any of the trees identified pursuant to (a), above, is dead, diseased, or otherwise unsafe and, if otherwise unsafe, the basis for the determination;
- (c) The size and placement of all primary, accessory, and water-dependent structures planned as part of the project; and
- (d) Whether the project will result in a residential or commercial use and, if commercial, whether the project will include any facility listed in RSA 483-B:9, II through IV-d.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1409.04 Determination of Consistency.

(a) The department shall ensure that the departmental programs responsible for reviewing the application(s) for a project coordinate their reviews.

(b) The department shall approve the application(s) only if it determines, as required by RSA 483-B:3, I, that:

- (1) The applicant has met all requirements for issuing the permit for which the application was submitted or has received a waiver or variance for the requirement; and
- (2) Issuing the permit(s) will be consistent with the intent of RSA 483-B.

(c) The department shall issue its decision in writing. If the decision is to deny one or more of the permits needed for the project, the reason(s) for the denial(s) shall be stated in writing.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1409.05 Submittal of Information When Replacing Failed Septic System.

(a) Any person needing to replace a failed septic system may request a waiver to the requirement of Env-Wq 1409.03(a) to identify the basal area of the trees in the protected woodland buffer.

(b) The request shall include a statement that the only work that will be done on the property is the replacement of the failed septic system.

(c) The request shall be submitted to the department in writing and shall be signed by the property owner and by the applicant, if other than the property owner.

(d) The signatures provided under (c), above, shall constitute certification that:

(1) The information provided is true to the knowledge and belief of the signer; and

(2) The signer understands that any waiver granted based on false or misleading information shall be subject to revocation.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

#### PART Env-Wq 1410 WAIVERS FROM RULES

Env-Wq 1410.01 Purpose. The shoreland protection rules will apply to a variety of situations and properties. It is recognized that strict compliance with all shoreland protection rules may not always be in the best interests of the public or the environment in every conceivable situation. The department therefore establishes these procedures and criteria, in accordance with RSA 541-A:22, IV, to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the environment.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

#### Env-Wq 1410.02 Procedures.

(a) Any person who is or would be directly and adversely affected by the strict application of a rule in Chapter Env-Wq 1400 may request a waiver thereof.

(b) Each request for a rule waiver shall be filed in writing.

(c) Each request for a rule waiver shall include the information specified in Env-Wq 1410.03.

(d) All requests for a rule waiver which are submitted as part of an application for a redevelopment waiver under Env-Wq 1406 or a variance under Env-Wq 1407 shall be submitted with such redevelopment waiver or variance application, or as soon thereafter as the need for the rule waiver is identified by the applicant or the department.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

#### Env-Wq 1410.03 Content and Format of Requests.

(a) The person requesting the rule waiver shall provide the following information:

(1) The name, mailing address, and telephone number of the property owner;

(2) The name, mailing address, and telephone number of the applicant, if other than the property owner;

(3) The location of the property to which the rule waiver request relates, if other than the mailing address of the property owner or applicant;



- (4) The number(s) of the specific section(s) of the shoreland protection rules for which a waiver is sought;
  - (5) A full explanation of why a rule waiver is being requested, including an explanation of the hardship that would be caused by compliance with the rule;
  - (6) If applicable, a full explanation of the alternate that is proposed to be substituted for the requirement in the rule, including written documentation and/or data to support the alternative; and
  - (7) A full explanation of why the applicant believes that having the rule waiver granted will meet the criteria in Env-Wm 1410.04.
- (b) The property owner and the person requesting the rule waiver, if other than the property owner, shall sign the request.
- (c) The signature(s) shall constitute certification that:
- (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
  - (2) The signer understands that any variance granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1410.04 Criteria.

- (a) Subject to (b), below, a request for a rule waiver shall be granted if:
- (1) Granting the request will not result in:
    - a. An adverse effect to the environment or natural resources of the state, public health, or public safety; or
    - b. An impact on abutting properties that is more significant than that which would result from complying with the rule; and
  - (2) One or more of the following conditions is satisfied:
    - a. Granting the request is consistent with the intent and purpose of the rule being waived; or
    - b. Strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant.
- (b) No rule waiver shall be granted if the effect of the waiver would be to waive or modify a statutory requirement.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1410.05 Decisions. The department shall notify the person requesting the waiver of the decision in writing. If the request is denied, the department shall identify the specific reason(s) for the denial.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

PART Env-Wq 1411 SUSPENSION OR REVOCATION OF WAIVERS AND VARIANCES

Env-Wq 1411.01 Purpose. The purpose of this part is to establish the procedures to suspend or revoke a redevelopment waiver issued under Env-Wq 1406, a variance issued under Env-Wq 1407, or a rule waiver issued under Env-Wq 1410.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1411.02 Definitions. For purposes of this part, the following definitions shall apply:

- (a) “Approval” means a redevelopment waiver issued under Env-Wq 1406, a variance issued under Env-Wq 1407, or a rule waiver issued under Env-Wq 1410, as applicable to a particular proceeding; and
- (b) “Recipient” means the person to whom the approval was issued.

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

Env-Wq 1411.03 Basis and Procedures for Suspension or Revocation.

(a) Any approval issued by the department shall be issued based on the presumption that the information submitted to obtain the approval is true, complete, and not misleading.

(b) If, after the issuance of an approval, the department receives information indicating that the information upon which the approval was based was false, incomplete, or misleading, the department shall notify the recipient in accordance with RSA 541-A:31, III of the date, time and place of a hearing at which the recipient shall be given an opportunity to show cause why the approval should not be revoked.

(c) The hearing shall be conducted in accordance with RSA 541-A:31 and Env-C 200.

(d) After the hearing, the department shall revoke the approval if the department determines that:

- (1) The approval would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project for which the approval was obtained cannot be made to conform to applicable requirements.

(e) After the hearing, the department shall suspend the approval if the department determines that:

- (1) The approval would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project for which the approval was obtained can be made to conform to applicable requirements.

(f) If an approval is suspended pursuant to (e), above, the department shall reinstate the approval upon receiving proof from the recipient that the project meets applicable requirements for approval.

(g) The department shall notify the recipient in writing of its decision. If the decision is to suspend or revoke the approval, the department shall specify the reason(s) for the decision.

# NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. #8329, eff 4-23-05 (see Revision Note at chapter heading)

## Appendix

| Rule Section(s) | Statute(s) Implemented  |
|-----------------|---|
| Env-Wq 1401     | RSA 483-B:1; RSA 483-B:2  |
| Env-Wq 1402     | RSA 483-B:4; RSA 483-B:17, X  |
| Env-Wq 1403     | RSA 483-B:5; RSA 483-B:9, V(a); RSA 483-B:17, VII; RSA 483-B:17, IX |
| Env-Wq 1404     | RSA 483-B:9, V(c)   |
| Env-Wq 1405     | RSA 483-B:17, IV  |
| Env-Wq 1406     | RSA 483-B:11  |
| Env-Wq 1407     | RSA 483-B:9, V(g)   |
| Env-Wq 1408     | RSA 483-B:12  |
| Env-Wq 1409     | RSA 483-B:3; RSA 483-B:6  |
| Env-Wq 1410     | RSA 541-A:22, IV  |
| Env-Wq 1411     | RSA 541-A:16, I(b)  |